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IN THE

Supreme Court of the United States

OCTOBER TERM 1961

No. 272

C. A. PAGE PUBLISHING CO., INC., a corporation,

Petitioner,

vs.

TELFORD WORK, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

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Respondents.

PETITION FOR WRIT OF CERTIORARI.

Petitioner, C. A. Page Publishing Co. Inc., a Corporation, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case March 8, 1961.

Opinions Below.

The opinion of the District Court is reported at 178 Fed. Supp. 184. The opinion of the Court of Appeals is not yet reported. The opinion of the Court of Appeals denying petitioner's Petition for a Rehearing is not yet reported. Said opinions are printed as Appendices A, B, and C, respectively, to this Petition.

Jurisdiction.

The Judgment of the Court of Appeals was entered March 8, 1961, a Petition for Rehearing was filed April 6, 1961, and the Opinion of the Court of

Appeals denying a rehearing was entered May 3, 1961. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented.

1. Does jurisdiction of the District Court in a private antitrust suit depend upon whether or not the defendant conspirators, found by the Court to be engaged in interstate commerce, did more or less interstate commerce after they forced a sale to them of the assets of a competitor, found by the Court to be engaged in interstate commerce, by acts constituting *per se* violations of the Sherman and Clayton Acts?

2. Does the quantity of commerce involved become material in determining whether activities prohibited by the Sherman and Clayton Acts occurred within the flow of commerce?

3. Whether activities prohibited by the Sherman and Clayton Acts, whether they occur within the flow of commerce or only affect commerce between the states, must result or tend to result in the control of an interstate market in order to be actionable?

4. Does Section 18 of Title 15 U. S. C. prohibit the acquisition by more than 100 newspapers found by the trial court to be engaged in interstate commerce of the assets of a competing newspaper found by the trial court to be engaged in interstate commerce where the admitted purpose of the purchase was for the "competitive advantages" the defendants would "All share mutually". [Companion Case, R. 614]?

5. Has Petitioner been deprived of its right to a jury trial on disputed issues of fact by the Court of Appeals' treatment of the case as if it were an appeal from an adverse judgment after a trial on the merits of the jurisdictional issue when in fact it was an appeal from an order granting summary judgment?

Statutes Involved.

The Constitution of the United States provides in pertinent part as follows:

> "Amendment VII. . . .
>
> In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Title 15 U. S. C. Section 1 as is pertinent here reads as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal. . . ."

Title 15 U. S. C. Section 2 as is pertinent here reads as follows:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor. . . ."

Title 15 U. S. C. Section 15 as is pertinent here reads as follows:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district Court of the United States in the district in which the defendant resides or is found or has an agent, with respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Title 15 U. S. C. Section 18 as is pertinent here reads as follows:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.
>
> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may

be substantially to lessen competition, or to tend to create a monopoly."

Title 15 U. S. C. Section 26 as is pertinent here reads as follows:

> "Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including Sections 13, 14, 18 and 19 of this Title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage as granted by courts of equity, under the rules governing such proceedings, and upon the execution of the proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue."

Rule 56 of the Federal Rules of Civil Procedure as is pertinent here reads as follows:

> "(b) A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
>
> "(c) . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Statement of the Case.

This action was instituted on behalf of Petitioner by way of a civil anti-trust action for treble damages and for an injunction. It is the Companion Case to *Marietta Page v. Telford Work, et al.*, hereinafter referred to as "the Companion Case." The Defendants below filed a Motion for Summary Judgment in the Companion Case and this case on February 20, 1959 [R. 131-141], and the District Court granted said Motion in an Opinion dated October 23, 1959, which disposed of Defendants' Motions in both the case at bar and in the Companion Case. (Appendix A.) The basis of the Defendants' Motion in both cases was that the District Court allegedly did not have jurisdiction as a matter of law in that the complained-of activities did not affect commerce [R. 131-141], and as stated by the District Court:

> "Both cases raise the identical jurisdictional issues and are treated together." (Appendix A, p. 1.)

The Petitioner and plaintiff in the Companion Case both appealed the decision of the District Court to the Court of Appeals for the Ninth Circuit. The decision of the Court of Appeals stated:

> "We agree with the statement of the District judge that both cases raise the identical jurisdictional issues." (Appendix B, p. 10), and
>
> "For the reasons given in the Companion Case, *Marietta Page v. Work, supra,* the judgment of the District Court in this case is likewise affirmed." Appendix B, p. 13.)

The plaintiff below in the Companion Case is filing her Petition for Writ of Certiorari in that case

with this Court concurrently herewith and Petitioner herein, therefore, will not repeat the factual background or argument made in that Petition and incorporates that Petition by reference herein with the same force and effect as if set forth in full.

The distinction between the two cases are immaterial to the question of jurisdiction but they are as follows:

1. Petitioner herein seeks injunctive relief against the Defendants below. [R. 21-22, Par. XVI (the clause beginning on line 12 of said Par. XVI of the Complaint with the words "Defendants should be, etc." and ending on line 17 of said paragraph with the words "to monopolize" was stricken from the Complaint by order of the District Court).]

2. Petitioner herein claims to have lost the bid on the delinquent tax list for Los Angeles County in the years 1951 and 1954 because of the collusive and joint bids by the defendants pursuant to the conspiracy complained of and seeks damages therefor. [R. 19-20 and R. p. 30.]

As in the Companion Case, there are no Findings of Fact by the Trial Court that negate the Petitioners claim of the conspiracy or that the defendants filed collusive bids which resulted in Petitioner losing the 1951 and 1954 delinquent tax lists or that the acquisition of Consolidated's assets, on whose behalf the Companion Case was brought, by Mutual did not create or tend to create a monopoly in the legal advertising market. [R. pp. 404-408 and particularly the Finding 13 R. 407.]

The Trial Court did find that plaintiff and defendants were engaged in interstate commerce [R. pp. 406-

407, Finding 8] but that there was no interference with the flow of national news or display advertising and that no showing was made that the defendants had any control or potential control over the interstate markets for newsprint, national display advertising, or the dissemination of national news [R. 407, Findings 10-11], and that no interstate market exists for Los Angeles legal advertising or for legal advertising in Los Angeles placed by out-of-state clients. [R. 408 Finding 14.]

The judgment of the Trial Court dismissing the action was made November 23, 1959. [R. 410.]

The Circuit Court of Appeals for the Ninth Circuit made an order that the record in the Companion Case could be considered in this case without the necessity of the duplication of the printing of the record thereof. [R. 424 to 425.]

As in the Companion Case, the Court of Appeals for the Ninth Circuit affirmed the Trial Court's judgment by treating this case as if it were an appeal from an adverse judgment after a trial on the merits of the jurisdictional issue. As in the Companion Case, Petitioner filed a Petition for Rehearing [Supp. R.], and the Circuit Court denied the Rehearing "for the reasons given in the Companion Case." (Appendix C, p. 14.)

Reasons for Granting the Writ.

Because the jurisdictional issue is identical in this case and in the Companion Case, the reasons for granting the Writ herein are the same as are stated in the Petition for Writ of Certiorari filed concurrently herewith in the Companion Case and said reasons and all

of them are incorporated herein by reference with the same force and effect as if set forth in full herein.

It should be pointed out that contrary to the statement of the Circuit Court of Appeals, the condemned activities of the defendants below in this case are the same as in the Companion Case, and that there is no exception. The Circuit Court of Appeals stated that there was no charge of territorial division of the market among the members of the Bureau and the exclusion thereof of non-members. (Appendix B, p. 10.) As pointed out by Petitioner in its Petition for Rehearing in the Circuit Court, this is not an accurate statement in that the alleged exception does not exist. [Supp. R. p. 3, Petition for Rehearing.]

It should also be pointed out that the Circuit Court's opinion erroneously states that:

> "The Los Angeles County delinquent tax list never enters the flow of interstate commerce. Just as no other single item of public or private legal advertising published in Los Angeles County ever enters the flow of interstate commerce." (Appendix B, p. 12.)

As was pointed out by the Petitioner in its Petition for Rehearing before the Circuit Court of Appeals, the County delinquent tax list is circulated to every subscriber of a newspaper publishing the same which means that it must go to the newspapers' out-of-state subscribers. [Supp. R. p. 4, Petition for Rehearing.]

As in the Companion Case, we have a case where both the Petitioner and the defendants below were found by the Trial Court to be engaged in interstate commerce and for the purposes of this Petition, it must

be admitted that the defendants were guilty of *per se* violations of the anti-trust laws in the legal advertising segment of the newspaper publishing business. Hence, even were the prohibited activities limited to an intrastate phase of the defendants' below business, those activities are included within the scope of the anti-trust laws under the decision of this Court in *Moore v. Mead's Fine Bread Co.*, 348 U. S. 115. The language in that decision found at pages 119 and 120 is particularly applicable and reads as follows:

> "We have here an interstate industry increasing its domain through outlawed competitive practices. The victim, to be sure, is only a local merchant; and no interstate transactions are used to destroy. But the beneficiary is an interstate business; the treasury used to finance the warfare is drawn from interstate, as well as local, sources which include not only respondent, but also a group of interlocked companies engaged in the same line of business; and the prices on the interstate sales, both by respondent and by the other Mead companies, are kept high while the local prices are lowered. If this method of competition were approved, the pattern for growth of monopoly would be simple. As long as the price warfare was strictly intrastate, interstate business could grow and expand with impunity at the expense of local merchants. The competitive advantage would then be with the interstate combines, not by reason of their skills or efficiency but because of their strength and ability to wage price wars. The profits made in interstate activities would underwrite the loss of local price-cutting campaigns. No instrumentality of interstate commerce would

be used to destroy the local merchant and expand the domain of the combined, but the opportunities afforded by interstate commerce would be employed to injure local trade. Congress, as guardian of the commerce clause, certainly has power to say that those adavntages shall not attach to the privilege of doing an interstate business. . . .

"It is, we think, clear that Congress by the Clayton Act and Robertson-Patman Act barred the uses of interstate business to destroy local businesses, outlawing the price cutting employed by the respondent."

Conclusions.

We respectfully submit that for all the reasons stated in the Petition for Writ of Certiorari in the Companion Case, filed concurrently herewith, that this Court should grant Petitioner's Petition herein.

Respectfully submitted,

DUDLEY K. WRIGHT,
Attorney for Petitioner.

APPENDIX A.

Opinion of the United States District Court, Southern District of California, Central Division.

United States District Court, Southern District of California, Central Division.

No. 14390-WM Civil.

C. A. Page Publishing Co., Inc., a California corporation, Plaintiff, vs. Telford Work, *et al.*, Defendants.

No. 14391-WM Civil.

Marietta Page, Plaintiff, vs. Telford Work, *et al.*, Defendants.

Solomon, Judge:

Each case is now before the court on plaintiffs' motions for partial summary judgment, and on defendants' motions for summary judgment; each motion is directed to the issue of jurisdiction under the Sherman and Clayton Acts. Both cases raise the identical jurisdictional issues, and are treated together. The court has taken testimony in addition to the [328] affidavits of counsel, and the parties are in agreement that all evidence relative to the jurisdictional issue is now before the court.

Plaintiff C. A. Page Publishing Company owns and publishes the Commercial News, a general business newspaper serving the Los Angeles area.

Defendants are a number of community newspapers serving small neighborhoods in and around Los Angeles and the Los Angeles Newspaper Service Bureau together with several of its officers. The Bureau

is owned substantially by the defendant newspapers and represents them in the solicitation of legal advertising.

Plaintiff seeks treble damages under the Sherman and Clayton Acts.[1] It claims that collusive and illegal bidding by defendants caused the Commercial News to lose printing contracts for the 1951 and 1954 Los Angeles delinquent tax lists. More particularly, plaintiff contends that defendant newspapers

(1) fixed rates for legal advertising published in their newspapers,

(2) appointed Telford Work to submit collusive and illegal bids,

(3) pooled forces and facilities to print and publish legal advertising so as to be in a position to outbid on public legal advertising all publishers who were not members of the Bureau,

(4) pooled receipts,

(5) sought to restrain the general public from [329] placing legal advertising with non-member newspapers,

(6) sought by threats, intimidation, and duress to destroy non-member newspapers,

(7) divided the market territorially among its members,

(8) placed prohibitive restrictions on new membership,

(9) bought out various non-member newspapers,

(10) succeeded in effectively eliminating competition by non-member newspapers in the publishing of legal advertising.

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[1] 15 U.S.C. §§ 1, 2, 4, 13, 15, 18 and 26.

Plaintiff contends that these activities enabled one of the defendant newspapers to obtain the contract to publish the Los Angeles delinquent tax list on bids of $52,000 in 1951, and $70,000 in 1954, as against plaintiff's bids of $109,000 in 1951 and $120,000 in 1954. Plaintiff estimates that its costs in printing the lists, had it been the successful bidder, would not have exceeded $24,000 for either list. Thus, it seeks over a half million dollars in damages, representing three times its estimated net profit of $85,000 in 1951, and $96,000 in 1954.

In the companion case, consolidated for trial, plaintiff Marietta Page brings a stockholder derivative action on behalf of Consolidated Printing and Publishing Company, the former publisher of the Los Angeles Daily Journal, a newspaper primarily engaged in the publication of legal advertising for the Los Angeles area.

She alleges that defendant newspapers sought to destroy the Journal, a non-member of the Bureau, and by their [330] activities impaired the revenues of the Journal so severely that the owners of Consolidated were forced to sell out for one million dollars less than the former value of the Journal. Thus, plaintiff seeks, for Consolidated, $3,000,000, treble its alleged loss.

Plaintiffs argue that a newspaper is by its nature engaged in interstate commerce, and therefore acts which interfere with the normal operation of a newspaper business necessarily affect interstate commerce sufficiently to satisfy the jurisdictional requirements of the Sherman and Clayton Acts.

We may assume that the plaintiff and defendant newspapers are engaged in interstate commerce by vir-

tue of (1) their regular purchases of newsprint from sources outside of California, (2) their carriage of some national news and feature items, (3) their carriage of some national advertising, and (4) a few out-of-state subscribers.

However, the test of jurisdiction is not that the acts complained of affect a business engaged in interstate commerce, but that the offensive acts affect the interstate commerce of such business or any business. Furthermore, it is not all economic consequences to interstate commerce which confer jurisdiction but only those anti-competitive consequences which the statutes are designed to prevent.[2]

This principle was very well expressed in Mandeville Farms v. Sugar Co., 1947, 334 U. S. 219, 234, where the court stated:

"[G]iven a restraint of the type forbidden by the Act * * * and a showing of actual or threatened effect upon interstate commerce, the vital question be-

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[2]"The word 'affect' is used in two different situations under the antitrust laws. A case under the antitrust laws, so far as the interstate commerce element is concerned may rest on one or both of two theories:

(1) That the acts complained of, occurred within the flow of interstate commerce. This is generally referred to as the 'in commerce' theory.

(2) That the acts complained of, occurred wholly on the state or local level, in intrastate commerce, but substantially affected interstate commerce.

"Under both of these theories, the transactions complained of must affect or have an effect on interstate commerce or the requirements of the statute are not satisfied. Under the 'in commerce' theory, the ultimate effect on interstate commerce is the impact on that commerce under a qualitative and not a quantitative test. If there is price fixing or division of the market involved, there are violations per se, as a matter of law. Where there is involved no price fixing or division of the market, the

comes whether the effect is sufficiently substantial and adverse to Congress' paramount policy declared in the Act's terms to constitute a forbidden consequence."

In Sears, Roebuck & Company v. Blade, S. D. Cal. 1953, 110 F. Supp. 96, Sears brought a treble damages action against its former Los Angeles advertising manager and several local engravers, arising out of an alleged kick-back arrangement between the manager and his co-defendants in the sale to Sears of engravings and mats.

Ample facts appeared to qualify Sears as a business engaged in interstate commerce, and the court so found. Nevertheless, the court dismissed the action on the express ground that the acts complained of were not alleged to have restrained or have tended to restrain these interstate activities in which Sears was engaged. Accord. Feddersen Motors v. Ward, 10 Cir. 1950, 180 F. 2d 519, Boro Hall Corp. v. General Motors, 2 Cir. 1946, 130 F. 2d 196, on rehearing. See also Brenner v. Texas Co., D. C. N. D. Cal. 1956, 140 F. Supp. 240, 243.

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effect of the transactions complained of may be a question of law or a mixed question of law and fact.

"Turning to the second alternative, where acts wholly within intrastate commerce substantially affect interstate commerce, these acts may occur before goods enter the flow of commerce, or after they leave the flow of commerce. Here we have a question of fact as to whether the wholly intrastate acts substantially affect the flow of commerce.

"After determination of the issue as to whether the wholly intrastate acts substantially affect the flow of commerce, we then reach the same problem that is reached under the 'in commerce' theory, namely the ultimate effect or impact of the acts complained of on interstate commerce and again the test is a qualitative one and not a quantitative test, and again is a question of law, or a mixed question of law and fact." Las Vegas Merchant Plumbers Ass'n v. United States, 9 Cir. 1954, 210 F. 2d 732, 739, n.3. [332]

In every case cited by plaintiff involving news media, a defendant had restrained, or attempted to restrain, competition in the interstate market for national news and advertising. Lorrain Journal v. United States, 342 U. S. 143 (1951); Farmers Guide Co. v. Prairie Co., 293 U. S. 268 (1943); Greenspun v. McCarran, D. C. Nev. 1952, 105 F. Supp. 662, and United States v. The Times-Picayune Publishing Co., D. C. E. D. La. 1952, 105 F. Supp. 670.

In each of these cases, newspapers, enjoying dominant positions in local or regional newspaper markets, utilized various methods outlawed by the Sherman Act, to draw advertising from competing news media, in order to drive competitors out of business and to monopolize local markets for interstate news and advertising.

In Evening News Publishing Co. v. Allied Newspaper Carriers of N. J., 3 Cir. 1959, 263 F. 2d 715, an association of newspaper carriers utilized its dominant position of the home delivery market to force the Evening News to abandon [333] the use of newsboys in order to restrain and monpolize home deliveries of the News. The court held that the dissemination of national news and advertising was "an essential element of [the newspaper's] being", and that home delivery is "an integral part of the interstate operation".

In the present case, the loss of the delinquent tax list contracts was not alleged to have threatened the normal operation of the Commercial News—a newspaper of general circulation neither primarily devoted to, nor economically dependent upon legal advertising. Thus, although the Commercial News carried substantial

amounts of national news and display advertising, there was no interference with the flow of such news and advertising to Commercial News readers. On the other hand, the Los Angeles Daily Journal, which is primarily devoted to legal advertising, carried insignificant quantities of national news and display advertising, so that even if we assume that the original Journal was eliminated as a competitor and the current Journal is a new and distinct entity, the elimination of the Journal also did not interfere with the flow of national news and display advertising.

Furthermore, even if the original Journal had carried substantial news and advertising and even if the Commercial News had been destroyed by defendants' activities, no showing could have been made that the defendants had any control or potential control over the interstate markets for newsprint, national display advertising, or the dissemination of national news. This is no case of creeping monopolization. Klors v. Broadway-Hale Stores, 1959, 359 U. S. 207. Plaintiffs [334] assert that the defendant newspapers were able to destroy the Journal by the exercise of control over the local legal advertising market. But this control could afford them no leverage to gain control of the interstate markets in newsprint, national news, or national display advertising, no matter how successful their monopoly of the legal advertising market, since the major users of these interstate services and commodities, such as the great metropolitan dailies, are not dependent upon the revenues brought by legal advertising.

If there existed an appreciable interstate market for Los Angeles legal advertising or a Los Angeles market for legal advertisements placed by out-of-state clients,

a case might be made out for the anti-competitive effects of defendants' activities on these markets. No such markets exist. The Journal is the only newspaper involved which is primarily devoted to legal advertising. It is the only newspaper involved whose out-of-state readers are particularly interested in legal advertising. The Journal has only 13 out-of-state subscribers, three of whom are complimentary. Similarly, legal advertisements for out-of-state clients appeared in the Journal regularly, though on a very small scale (averaging 5 items per issue), and a great majority of these items were placed by local counsel. These are not "substantial" or "appreciable" amounts of interstate commerce by any standards, and we hold that these items also come within the maxim de minimus. See, *e.g.*, Klors v. Broadway-Hale Stores, *supra*, at 211; Mandeville Farms v. Sugar Co., *supra*, at 234; United States v. Yellow Cab Co., 1946, 332 U. S. 218, 225. Cf. Mabee v. White Plains Publishing Co., 1945, [335] 327 U. S. 178, 181; Labor Board v. Fainblatt, 1938, 306 U. S. 601, 607.

Plaintiffs' motions for partial summary judgments are denied, and defendants' motions for summary judgments are granted. Both cases are dismissed. No costs. [336.]

[Endorsed]: Filed October 23, 1959.

APPENDIX B.

Opinion of the United States Court of Appeals for the Ninth Circuit.

C. A. Page Publishing Co., Inc., a corporation, Appellant, v. Telford Work, *et al.*, Appellees. No. 16,786. March 8, 1961.

Before Chambers, Barnes and Jertberg, Circuit Judges. Jertberg, Circuit Judge.

This is a companion appeal to Marietta Page, appellant v. Telford Work, *et al.*, appellees, No. 16,787, which was this day decided. As in the Marietta Page case, appellant appeals from a judgment dismissing for want of federal jurisdiction a civil antitrust suit for treble damages. Jurisdiction of the district court was invoked under the provisions of Title 15 U. S. C. A. Sections 1, 2, 4, 7, 13, 15 and 18, commonly known as the Sherman Antitrust Act and the Clayton Act. This Court has jurisdiction under the provisions of Title 28 U. S. C. A. Sections 1291 and 1294.

As in the companion case, judgment of dismissal was entered following the granting by the district court of appellees' motion for summary judgment based on the ground that there existed no genuine issue on a material fact relating to the question of jurisdiction. Proceedings leading up to the entry of the judgment are similar to those set forth in the companion case, and judgment was entered following extensive pretrial discovery proceedings and conferences, culminating in a pretrial conference order containing 21 pages of admitted facts. The opinion of the district judge, reported at 178 F. Supp. 184, disposed of both cases. As in the companion case, the parties in effect con-

sented to a separate trial on the issue of jurisdiction. We agree with the statement of the district judge that both cases raise the identical jurisdictional issues. The background and historical material are set forth in the companion case and will not be repeated here. The condemned activities of the appellees are the same as in the companion case, except that in the instant case there is no charge of territorial division of the market among the members of the Bureau and the exclusion therefrom of non-members.

Appellant is the publisher of Commercial News, a general business newspaper serving the Los Angeles area, which was not primarily engaged in legal advertising. Appellant charges that the activities of the appellee newspapers enabled one of the appellee newspapers to obtain the contract from the County of Los Angeles to publish the Los Angeles County delinquent tax list on bids of $52,000 in 1951 and $76,000 in 1954, as against appellant's bids of $109,000 in 1951 and $121,000 in 1954. The delinquent tax list is only one of several types of public advertising contracts which is let by Los Angeles County. Appellant estimates that the cost of publishing the lists, had it been the successful bidder, would not have exceeded $24,000 for either list. Appellant claims treble the amount of estimated loss of profits on the publication of this list for the two years specified.

Publication of the Los Angeles County delinquent tax is required by California law annually, and the manner of publication is set out in detail. The publication of this 300-page document, the largest single item of public advertising purchased by Los Angeles County, produced unique mechanical and financial prob-

lems. When Commercial News, owned by appellant, did succeed in bidding successfully for the Los Angeles County tax list in 1942 and 1943, the composition work had to be assigned to the Los Angeles Daily Journal (hereinafter called the "Journal"), which was at that time owned by Consolidated Printing and Publishing Company, upon whose behalf the companion case was brought. During the years 1945 to 1950, appellees, acting through the Bureau, were successful bidders, but they also had to depend on the facilities of the Journal for a part of the operation. Consolidated, which still owned the Journal in these years, received a proportionate share of the profits from the publication of the list for the use of Journal facilities.

In 1951 the assets of the Journal were sold to Mutual Newspaper Publishing Company, (hereinafter referred to as "Mutual"), which is a subsidiary of the Bureau and which is owned substantially by appellee newspaper publishers. Thus, in 1952 (1951 list) and 1955 (1954 list), when a member of the Bureau underbid Commercial News for the Los Angeles County delinquent tax list, the low bidding member still had to use the facilities of the Journal which facilities by then were owned by Mutual.

From the above facts it appears that whoever the low bidder for the delinquent tax list might be, such low bidder required the facilities of the Journal in order to print the list. Thus, it is claimed by appellant herein that the alleged forced sale of the Journal assets to Mutual, which was the subject matter of the companion case, has rendered it impossible for appellant to bid competitively for the publication of the list, although it is not specifically alleged that appellees would have re-

fused to allow appellant to use the facilities of the Journal had it been the low bidder.

The Bureau itself never bid for the publication of the Los Angeles County tax list, nor did it publish any public or private legal advertising. No claim is made and the record discloses no irregularities in the manner in which the Los Angeles County officials conducted competitive bidding for the 1951 and 1954 lists and awarded contracts to the lowest bidders. Appellant submitted bids for the tax lists of the years in question. but it was underbid by members of the Bureau.

Appellant's contention is that it was indirectly injured by the same allegedly illegal and monopolistic activities which caused the direct injuries to Consolidated discussed in detail in the companion case. We note the same product, legal advertising, is here involved in the same market area, Los Angeles County, and the same activities by appellees have led to the injuries claimed, as in the companion case. The Los Angeles County delinquent tax list never enters the flow of interstate commerce, just as no other single item of public or private legal advertising published in Los Angeles County ever enters the flow of interstate commerce. We do not see that the effect on Commercial News of its unsuccessful bid for the Los Angeles County delinquent tax list reaches any further toward the interstate activities of newsprint purchase, commercial and display advertising, news dissemination, and out-of-state circulation than did the effect of the alleged injuries to Consolidated, discussed in detail in the companion opinion. If anything, competition in these interstate markets is less substantially affected, if affected at all. We feel that our opinion in the com-

panion case adequately covers the fact situation raised in this appeal.

Appellant here makes one point not raised in the companion case. Appellant claims that the conspiracy alleged included a restraint on the dissemination of national news through the City News Service, a news gathering agency at one time operated by appellee Telford Work individually, which suspended operations on November 11, 1944. Whatever may have been the consequences of this action to interstate commerce in news dissemination, Commercial News has charged injury only as a result of loss of public legal advertising. We see no relation between the operation of City News Service and the competition between appellees and Commercial News, for public legal advertising, and thus the interstate character of City News Service is entirely irrelevant to jurisdictional issues here presented.

For the reasons given in the companion case, Marietta Page v. Work, *supra*, the judgment of the district court in this case is likewise affirmed.

(Endorsed) Opinion Filed March 8, 1961.

Frank H. Schmid, Clerk.

APPENDIX C.

Denial of Petition for Rehearing.

C. A. Page Publishing Co., Inc., a corporation, Appellant, v. Telford Work, *et al.*, Appellees. No. 16,786. May 3, 1961.

Before Chambers, Barnes and Jertberg, Circuit Judges. *Per Curiam:*

An opinion was filed herein on March 8, 1961, ... F. 2d ...., affirming the judgment of the district court dismissing for want of federal jurisdiction a civil antitrust action.

Appellant has filed herein a petition for rehearing. We have this day denied the petition for rehearing of appellant in the companion appeal of Marietta Page, appellant, v. Telford Work, *et al.*, appellee, No. 16,787. For the reasons given in the companion case, the petition of appellant for rehearing in this case is likewise denied.

(Endorsed) *Per Curiam* Opinion Filed May 3, 1961.

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IN THE

Supreme Court of the United States

October Term, 1961

No. 272

C. A. PAGE PUBLISHING CO., INC., a corporation,
Petitioner,

vs.

TELFORD WORK, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinions Below

The opinion of the District Court (App. A of Petition) is reported at 178 Fed. Supp. 184. The opinions of the Court of Appeals for the Ninth Circuit on Petitioner's appeal (App. B of Petition) and denying Petition for Rehearing (App. C of Petition) are officially reported in 290 Fed. 2d Adv. Sheets 334, and are unofficially reported in C.C.H. 1961 Trade Cases, ¶69,956, p. 77,812 and ¶70,014, p. 78,016, respectively.

Jurisdiction

The general jurisdictional requisites for a Petition are set forth in the Petition; however, there is no Federal Jurisdiction under the antitrust laws in this case. The alleged activities in the local *intrastate* market of printing and publishing the delinquent tax list of Los Angeles County, California, do not directly or substantially affect or tend to monopolize any interstate commerce in which the parties engage.

Questions Presented

The Petition tenders five unintelligible and academic questions not expressed in the terms and circumstances of this case. The questions presented in the Petition do not apprise the Court or Respondents of the issues which Petitioner is seeking to have reviewed, but indicate rather a misconstruction of the opinions of the Courts below and the principles of law therein stated.

The real questions presented in this case involve well-established principles of antitrust law not requiring review by this Court and are as follows:

1. Whether there is Federal Jurisdiction under antitrust laws where trade and commerce between the states is not involved in or affected by the alleged activities of Respondent with relation to the printing and publishing of the delinquent tax list of Los Angeles County, the *intrastate* activity which is the subject matter of this action?
2. Whether Petitioner can invoke §7 of the Clayton Act (Title 15, §18, U.S.C.) by reason of the

acquisition by Respondent Newspaper Publishers, through a corporate agency, of individually owned assets of a legal newspaper in which Petitioner was not interested, financially or otherwise, and claims no loss from such acquisition, where such acquisition did not lessen competition, or monopolize or tend to monopolize the interstate trade and commerce in which Petitioner is engaged?

3. Whether Petitioner can complain of a deprivation of a jury trial where there exists no genuine issue as to any fact material to the question of Federal Jurisdiction and Summary Judgment dismissing the action was granted as a matter of law?

Statutes and Rules Involved

The provisions of the Constitution, Statutes and Rules on which Petitioner relies are set forth in the Petition at pp. 3-5. Petitioner has omitted from the Petition Rule 56(a) of the Federal Rules of Civil Procedure invoked by Petitioner in Petitioner's Cross-Motion for Summary Judgment in the District Court on the question of Federal Jurisdiction under the Antitrust Laws. [R 285] The pertinent provisions of said Rule 56(a) are as follows:

> "A party seeking to recover upon a claim, counter-claim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with

or without supporting affidavits for a summary judgment in his favor upon all or any part thereof."

STATEMENT

Respondents' Motion for Summary Judgment in the District Court was granted and the action was dismissed upon the ground that there was no Federal Jurisdiction to award damages in this Civil Antitrust action, involving only the local *intrastate activity* of publication of the delinquent tax lists of Los Angeles County in the years 1952 and 1955. Based upon the undisputed facts, the District Court found that there was no direct or substantial effect or interference with any interstate trade or commerce in which the parties engaged in their respective businesses.

The Petition does not reflect the fact that Petitioner also joined in requesting the District Court to determine the question of Federal Jurisdiction in a Counter-Motion for Summary Judgment [R. 285-307], accompanied by a proposed form of Partial Summary Judgment "removing from the jury's consideration the question of interstate commerce and the question of jurisdiction." [R. 307] Petitioner's Cross-Motion was denied in the Order for Summary Judgment dismissing the action for lack of Federal Jurisdiction. [R. 409]

Petitioner did not raise any genuine issue on the material facts which Respondents set forth in their Motion as determinative of the question of Federal Jurisdiction [R. 131-139] but Petitioner rested its opposition and its Counter-Motion upon an erroneous concept of law concerning the basis for Federal Jur-

isdiction under the Sherman and Clayton Acts, contending in that regard that the test of Federal Jurisdiction under the antitrust laws is whether the parties are engaged in interstate commerce and urging that a different set of facts is determinative of the question of Federal Jurisdiction.

The Courts below found that this case and the Marietta Page case (No. 271) "raise the identical jurisdictional issues". The District Court disposed of both cases in one opinion. [178 F. Supp. 184] The Court of Appeals wrote a separate opinion in this case referring to the Marietta Page case for the recital of background and historical material concerning Respondents. [290 F. 2d Adv. Sh. 334]

Petitioner concedes that there are distinctions between the two cases. [Pet. p. 7] The relevant market or subject matter and basis of claimed loss in this case is different from the relevant market and basis for claim of loss in the Marietta Page case. Also in this case Petitioner seeks an injunction against alleged activities of Respondents, as claimed in the original complaint [R. 21-22] except that the allegations regarding divestiture were admittedly stricken from the complaint. [Pet. p. 7] The Court of Appeals also points out distinctions between the two cases in the charges concerning condemned activities. [290 F. 2d, at p. 335]

The "Statement of the Case" in the Petition does not contain a recital of facts sufficient to acquaint this Court with the subject matter of this action and the material facts of this case on which the District Court Judgment and the decision of the Court of Appeals rest. Respondents therefore set forth herein a state-

ment of facts material to the consideration of the questions presented in this case:

Statement of Facts

This private action for treble damages and injunction (originally filed August 5, 1952 and supplemented June 9, 1958) is based upon claimed loss of two items of public legal advertising of Los Angeles County consisting of:

1) 1951 delinquent tax list published in 1952; and

2) 1954 delinquent tax list published in 1955 (claimed in the Supplemental Complaint).

Petitioner claims no other losses in this action. [Admitted Facts, '74, R. 85] Petitioner (incorporated June, 1938) is the publisher of the Commercial News, a *business newspaper* not primarily in the legal publication field, publishing little private legal advertising, and insignificant and sporadic amounts of public legal advertising (one item in nine years). Petitioner makes no claim of loss of such advertising. [Admitted Facts, §9, 15 and 73, R. 66, 67, and 85; R. 183]

It is conceded by Petitioner that all of the newspaper Respondents were "community newspapers" serving small neighborhoods in and around Los Angeles, as distinguished from the Metropolitan papers in the City of Los Angeles. Some of Respondents were no longer in business and some of the newspapers previously published were no longer being published at the time of the 1955 publication of the delinquent tax list of Los Angeles County. [R. 47-51] Each of the Respondent newspapers had been judicially adjudi-

cated by the courts of the State of California in and for the Los Angeles County to be a newspaper of general circulation, thereby qualified to publish legal advertising in Los Angeles County. [Admitted Facts, ¶1, R. 64]

The historical background and activities of Respondent, Los Angeles Newspaper Service Bureau, Inc. (hereinafter referred to as Bureau) are set forth in the Statement of Facts in the Marietta Page case (No. 271) and for the sake of brevity reference is made thereto as if set forth herein. Suffice it to here state that Bureau was incorporated in 1934 to enable each of its newspaper publisher stockholders to have a downtown Civic Center representative, and each publisher individually used the services of Bureau under a separate representation agreement in connection with the solicitation, printing and publishing of private and public legal advertising. Bureau did not publish any legal advertising. [Admitted Facts, ¶75, R. 85]

Bureau owns all of the stock of Mutual Newspaper Publishing Company, (hereinafter referred to as "Mutual") the publisher of the Los Angeles Daily Journal. [Admitted Facts, ¶21 and 22, R. 69] All of the stockholders of Bureau were not joined as parties defendant in this action. [Admitted Facts, ¶17, R. 69]

Re: Relevant Market Involved

This case involves only the publication of the delinquent tax lists of Los Angeles County in the years 1952 and 1955 under contract with the County of Los Angeles pursuant to the provisions of the Revenue and Taxation Code of California then in effect. This

type of legal advertising is distinct not only from display and classified advertising but from other types of legal advertising, in purpose, size, volume, specifications, infrequency of publication, price, costs and financial requirements. The publication of the delinquent tax list of Los Angeles County is not interchangeable with any other types of advertising and comprises a separate, distinct and limited "relevant market".

The Revenue and Taxation Code of California requires that the Tax Collector of each County cause to be published annually a list of the delinquent tax payers, the descriptions of their respective properties, and the respective amounts of the delinquent taxes, together with notice of time and place of Tax Sale. (Rev. & Tax Code of Cal. §3351, et seq.)

In the years 1952 and 1955, the law required that such delinquent tax list be published once a week for three successive weeks in a newspaper of general circulation *published in the county.* (Rev. & Tax Code of Cal. §3356) In order to qualify for such publication of the delinquent tax list of Los Angeles County, a newspaper must be adjudicated as a newspaper of general circulation in Los Angeles County, as defined in the Government Code of California, requiring that such newspaper must have been established, printed and published at regular intervals for at least one year in Los Angeles County. (Govt. Code of Cal. §6000, et seq.)

The publication of the delinquent tax lists of Los Angeles County in the years 1952 and 1955 was made pursuant to Requests for Bids by the County Purchasing Agent, mailed to the newspapers of general circu-

lation of Los Angeles County. [Admitted Facts, ¶35 and 56, R. 75 and 81].

Re: No Restraint or Monopoly of the Relevant Market

Each of the contracts for publication of the delinquent tax lists of Los Angeles County was awarded in the years 1952 and 1955, respectively, to the lowest bidder, by the Purchasing Agent of Los Angeles County. [Admitted Facts, ¶51 and 59, R. 79 and 81]

Petitioner's bid was the highest bid in each of said years [Admitted Facts, ¶39, 57 and 58, R. 76 and 81] Petitioner filed bids in 1952 and 1955 at the high rates of 75¢ per legal square, well-knowing that the highest award for publishing the delinquent tax list of Los Angeles County was at the rate of 42½¢ per legal square prior to 1952, and at the rate of 46¢ per legal square prior to 1955. [Admitted Facts, ¶32, R. 74; R. 188]

In 1952 it would have cost the County of Los Angeles $109,281 for the 1952 publication of the delinquent tax list if the contract had been awarded to Petitioner on its high bid, as compared with the amount paid to the successful low bidder in the sum of $52,384. [Admitted Facts, ¶52 and 54, R. 79 and 80] It would have cost the County of Los Angeles $119,864 for the 1955 publication of the delinquent tax list if the contract had been awarded to Petitioner on its high bid, as compared with the amount paid to the successful low bidder in the sum of $75,814. [Admitted Facts, ¶60 and 62, R. 82 and 83]

Petitioner's estimate of the production cost of publishing said delinquent tax list in 1952 by the planned

offset method, if the contract had been awarded to Petitioner, was $23,590; the production cost of composing and printing the said delinquent tax list in 1952 by the successful bidder was approximately $25,000. [Admitted Facts ¶55, R. 80-81; R. 194, 197] Petitioner's estimate of production cost of composing and printing said delinquent tax list by offset method in 1955, if the contract had been awarded to Petitioner was $23,590; the production cost of composing and printing said delinquent tax list in 1955 by the successful bidder was approximately $29,680. [Admitted Facts, ¶63, R. 83]

The activities of Petitioner in making its bids on public legal advertising were not restrained or curtailed by the Respondents, or any of them. [Admitted Facts, ¶37, R. 75-76, R. 192-193] The bidding was competitive. The bids were taken by the Purchasing Agent of Los Angeles County in accordance with well established competitive bidding practices. None of the Respondents had any control over the awarding of the bids. [R. 202-3] Petitioner was not restrained in the submission of any bid. Petitioner could have submitted a bid lower than the bids on which the contracts were awarded and made a larger profit than the successful bidder, as Petitioner's estimated cost was lower than the cost of the successful bidder in each instance. [Admitted Facts, R. 75-76; R. 192-193]

Petitioner never published the delinquent tax list of Los Angeles County [Admitted Facts, ¶27, R. 73] In 1942 and 1943, contracts for publication of the delinquent tax list of Los Angeles County were awarded to Petitioner as the lowest bidder. The contracts awarded to Petitioner were assigned by Petitioner in 1942

and 1943, to Consolidated Printing and Publishing Co. (hereinafter referred to as "Consolidated") and said delinquent tax lists were published by Consolidated in 1942 and 1943 and were not published in Petitioner's newspaper, the Commercial News. [Admitted Facts, ¶30, R. 73-74] Commercial News never set type for Consolidated in connection with Consolidated's publication of the delinquent tax list in any year. [Admitted Facts, ¶68, R. 84]

Re: No Restraint or Monopoly of Any Interstate Commerce

Included in Petitioner's estimate for cost of publishing the delinquent tax list in 1952 was an estimated amount of $2424 for newsprint: and an estimated amount of $2500 for cost of newsprint for publishing the delinquent tax list in 1955. [Admitted Facts, ¶55 and 63, R. 81 and 83] Securing newsprint sufficient to publish the delinquent tax lists if the contracts had been awarded to Petitioner posed no problem for Petitioner as Petitioner had the newsprint available either in the warehouse or available from its supplier. [Item 17, R. 195]

Petitioner was not engaged in competition with Respondents, or any of them, in any interstate activity. Petitioner claims no loss of subscriptions, either within the state or outside of California; no loss of display advertising, classified advertising, or private legal advertising. Petitioner makes no claim that it was restrained or excluded from acquiring news, wire service, photocopy service, newsprint, newspaper equipment and supplies, or any of the other items upon

which Petitioner based its claim of interstate commerce in this case. [R. 175-178]

Findings of Fact and Decisions of Lower Courts

The District Court found that the alleged loss of the delinquent tax list contracts did not threaten the normal operation of the Commercial News, a newspaper of general circulation neither primarily devoted to, nor economically dependent on legal advertising; and although the Commercial News carried substantial amounts of national news and display advertising, there was no interference with the flow of such news and advertising to Commercial News readers. [R. 401]

The District Court also found that there exists no "appreciable interstate market for Los Angeles legal advertising or a Los Angeles market for legal advertisements placed by out-of-state clients". [R. 408]

The District Court also assumed that the Petitioner and Respondent newspapers are engaged in interstate commerce by virtue of (1) their regular purchases of newsprint from sources outside of California, (2) their carriage of some national news and feature items, (3) their carriage of some national advertising, and (4) a *few* out-of-state subscribers. [R. 398]

The District Court also found that no showing was, or could have been made, that respondents had any control or potential control over the interstate markets for newsprint, national display advertising, or dissemination of news. [R. 407]

The District Court found and concluded that the market involved in this case is an *intrastate activity*

which is not in trade or commerce between the states; that the interstate trade and commerce in which the parties engaged did not suffer any anti-competitive effects from the acts of Respondents of which Petitioner complains; and that the activities of Respondents with relation to legal advertising did not have any anti-competitive effect on any interstate commerce, and there is no jurisdiction of the Federal Court in this case under the antitrust laws. [R. 408]

No error in such findings and conclusions based upon undisputed facts in this case was shown by Petitioner on appeal to the Court of Appeals. The Court of Appeals affirmed the District Court's Judgment dismissing the action for lack of Federal Jurisdiction, stating, among other facts, that "The Los Angeles County delinquent tax list never enters the flow of interstate commerce, just as no other single item of public or private legal advertising published in Los Angeles County ever enters the flow of interstate commerce" [290 F. 2d at p. 336]; and that competition in the interstate activities of newsprint purchase, commercial and display advertising, news dissemination, and out-of-state circulation was not substantially affected, if affected at all, by the unsuccessful bid of Commercial News for the Los Angeles Delinquent Tax List. [290 F. 2d at p. 337]

ARGUMENT

Petitioner incorporates by reference to the Petition in the Marietta Page case, No. 271, the statement of "reasons for granting the Writ", asserting that "the jurisdictional issue is identical in this case". [Pet. p. 8] Without conceding the relevancy or materiality

thereof, for the sake of brevity, in so far as the arguments and contentions in the Petition in the Marietta Page case are incorporated by reference in the Petition in this case, Respondents incorporate herein by reference the arguments and points made in the Brief for Respondents in Opposition thereto.

The market or field of activity which is the subject matter of this civil antitrust action for damages is the *local intrastate market* of printing and publishing the delinquent tax lists of Los Angeles County, which is an even narrower and more limited field of activity than the local activity of legal advertising in Los Angeles County, the intrastate market involved in the Marietta Page case. Admittedly, Petitioner's only claim of loss in this action is based upon claimed loss of the two delinquent tax lists of Los Angeles County, published in 1952 and 1955, respectively. The instant case does not involve any competition in the publication of "private legal advertising" as Petitioner claims no loss of "private legal advertising". [Admitted Facts, ¶73, R. 85] Based upon undisputed facts, the District Court found that the Commercial News (Petitioner's newspaper) is "neither primarily devoted to, nor economically dependent upon legal advertising," and that the loss of the delinquent tax list contracts was not claimed to have threatened the normal operation of the Commercial News. [App. A of Pet. p. 6]

Petitioner contends that the Court of Appeals erroneously stated in its separate opinion in this case that "The Los Angeles County delinquent tax list never enters the flow of interstate commerce, just as no other single item of public or private legal ad-

vertising published in Los Angeles County ever enters the flow of interstate commerce", urging as the basis for claimed error, that "the County delinquent tax list is circulated to every subscriber of a newspaper publishing the same which means that it must go to the newspapers' out-of-state subscribers." [Pet. p. 9]

The incidental circulation of the publication of the tax list, as a special unique ingredient of three issues of the newspaper publishing the tax list, to its few out-of-state subscribers, comes within the maxim "*de minimus*", and does not constitute the "trade and commerce between the states" which the antitrust laws are designed to protect.

The publication of the delinquent tax list of Los Angeles County must be made in a newspaper of general circulation in Los Angeles County. (Gov. Code of Cal. §6040) The successful bidder to whom the contract for printing and publishing the delinquent tax list of Los Angeles County is awarded is only required to publish that public legal notice in Los Angeles County and not elsewhere. In order to publish such delinquent tax list, the newspaper must be qualified for that purpose as a newspaper of general circulation in Los Angeles County under the provisions of §6000, et seq. of the Government Code of California. The New York Times, The San Francisco Chronicle, or any other out-of-state or out-of-county newspaper, though circulated in Los Angeles County, would not qualify to publish the delinquent tax list of Los Angeles County, as such papers would not meet the statutory requirements of being established, printed, published and adjudicated as a "newspaper of general circulation" in Los Angeles County.

Inasmuch as the publication of the delinquent tax list of Los Angeles County is confined by law to the locale of Los Angeles County, there is no genuine issue that such "relevant market" is a purely local intrastate activity and not in the "stream" or "flow" of "trade or commerce between the states". The spurious contention of Petitioner to the contrary does not raise a genuine issue and cannot convert the limited activity of publication of the delinquent tax list of Los Angeles County to "trade and commerce between the states".

Recognizing the vacuity of such contention, Petitioner urges that "even were the prohibited activities limited to an intrastate phase of the defendants' below business, those activities are included within the scope of the anti-trust laws under the decision of this Court in *Moore v. Mead's Fine Bread Co.*, 348 U. S. 115." [Pet. p. 10] The cited case involved discrimination in prices of products sold in interstate commerce in violation of Section 3 of the Robinson-Patman Act (15 U.S.C. §13a) In reciting the facts in the cited case, this Court noted that the respondent is engaged in commerce, "selling bread both locally and interstate" and "in the course of such business, it made price discrimination, maintaining the price in the interstate transactions and cutting the price in the intrastate sales." The cited case is not applicable to the facts in the case at bar.

In the instant case, there is no competition between the parties in the interstate activities in which the parties are engaged. Petitioner claims no loss of subscriptions, either within or without the State of California. [R. 175-176] It is obvious that Petitioner's

out-of-state subscriptions were not based upon the expectation of receiving a copy of the delinquent tax list of Los Angeles County as Petitioner never published the delinquent tax list [Admitted Facts, ¶27, R. 73] and Petitioner lost no subscribers on that account.

Petitioner claims no loss of display advertising, classified advertising, or private legal advertising, or even public legal advertising other than the *two delinquent tax lists* on which Petitioner filed competitive bids in 1952 and 1955. Petitioner makes no claim that it was restrained or excluded from acquiring news, wire service, photocopy service, newsprint, newspaper equipment and supplies, or any of the other items upon which Petitioner bases its claim of interstate commerce in this case. [R. 173-181] Neither the source of supply nor the price of any of said supplies or activities was controlled by Respondents, or any of them. There was no interference with the manufacture or transmitting in interstate commerce of any of such supplies and services. Petitioner claims no discrimination against it in the acquiring of any newsprint or other supplies or services from out-of-state. [R. 195]

There was no area of competition between the Commercial News and the Respondent Newspapers except the bidding for the printing and publishing of the delinquent tax lists of Los Angeles County, admittedly the relevant market in this case. Petitioner was not deprived of any competitive opportunity by Respondents in connection with the bidding for publication of said delinquent tax lists and was not restrained. Petitioner suffered no injury to its business or prop-

erty by reason of anything forbidden in the antitrust laws. The charges of conspiracy, collusive bidding, and all of the alleged overt acts and alleged *per se* violations, which did not give rise to Petitioner's claim of loss or injury, are not relevant or material to the question of Federal Jurisdiction.

Petitioner charges Respondents with a conspiracy wholly unrelated to the two items of loss claimed by Petitioner based upon the 1952 and 1955 bidding for and publication of the delinquent tax lists of Los Angeles County. Admittedly Petitioner was not restrained from filing any bid that Petitioner in its sole discretion, desired to file. [Admitted Facts, ¶37, R. 75-76] Petitioner was not compelled by higher production costs to enter a high bid. As hereinabove shown, in the statement of facts, Petitioner's estimated costs of production by the offset method of printing which Petitioner planned to use when it entered its said bids, was lower than the actual cost of production under the contracts awarded to the successful bidders. [Admitted Facts, ¶55 and 63, R. 80-81 and 83]

It is clear that Petitioner is merely in the position of an unsuccessful bidder. The bids for the publication of the delinquent tax lists of Los Angeles County were taken by the Purchasing Agent of Los Angeles County in accordance with the usual competitive bidding practices. It is not contended that Respondents had any control over the awarding of the contracts on the bids submitted. Petitioner's high bids and not the activities of Respondents prevented Petitioner from receiving the award of the contracts. Petitioner is merely a disgruntled bidder. Petitioner cannot demonstrate that any interstate trade or commerce was re-

strained or monopolized, or potentially monopolized, or in fact involved in this action.

The Courts below correctly held that the effect on Commercial News of its unsuccessful bids for the Los Angeles County delinquent tax list did not affect interstate commerce. There is no basis in fact or error in law warranting a review of this case by this Court.

CONCLUSION

For the reasons hereinabove stated, it is respectfully submitted that there is no ground for review of the decision below turning upon the special facts of this case, and this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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September 8, 1961.